

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. L 2006080282

SAMUEL E.

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

DECISION

This matter came on regularly for hearing before Carolyn Dee Magnuson, Administrative Law Judge of the Office of Administrative Hearings, on September 29, 2006 in Torrance, California.

Claimant's parents represented the Claimant.

Steven Roberts, Manager of Rights Assurance for Harbor Regional Center (Service Agency or HRC), appeared on behalf of the Service Agency.

Evidence was received. The record was left open for Claimant to submit a Relationship Development Assessment report and for the Service Agency to respond. The report was received on October 19, 2006 and marked as exhibit N. The response was received on October 30, 2006 and marked as exhibit O. The record was then closed.

ISSUES

The parties stipulated that the issues to be decided are:

1. Should HRC provide Relational Developmental Intervention (RDI) therapy for Claimant?

2. If so, is HRC obligated to reimburse the family for the RDI evaluation and initial consultations which the family purchased privately?

FINDINGS OF FACT

1. Claimant is a 13-year-old boy who has been diagnosed with autism. Claimant's parents described him as being very high functioning. Claimant lives with his mother, father, and younger brother. He is in the eighth grade and attends a private school. Claimant was removed from public school because the bullying and teasing he was subjected to at that school were intolerable.

2. Claimant has a history of difficulty with social interactions with his peers. He has participated in social skills programs in the past, but continues to experience difficulty in reacting appropriately in social situations. The consequence of this lack of social awareness is that eventually, in each successive milieu, Claimant is ostracized from/by the peer group.

3. This repeated rejection is very emotionally draining for Claimant. In addition, Claimant's behavior has become increasingly oppositional and defiant. The Claimant's parents appear to believe this hostile behavior is linked to Claimant's self-esteem issues.

4. Claimant's parents are concerned that Claimant will be permanently socially handicapped if his social ineptness is not corrected soon. Because of their concern, Claimant's parents have researched programs to address Claimant's social needs. Based on their research, the parents have concluded that RDI is the program Claimant requires.

5. RDI was developed by a licensed clinical psychologist. The purpose of the program is to address the social-emotional limitations experienced by autistic individuals. Parental training and participation are essential components of the RDI program. However, the program has not been successfully subjected to experimental replication or to peer review and acceptance. The only study of the program to date was done by its creator.

6. At Claimant's last Individual and Family Service Plan (IFSP) meeting, Claimant's mother stated that the family wanted RDI provided for Claimant. She was told then, and at subsequent times, that RDI was not recognized as an approved therapy by HRC; thus, there was no vendor qualified to provide RDI services to Service Agency clients.

7. Instead of agreeing to fund RDI services, the Service Agency offered services through Family Behavior Services (FBS) which entails a comprehensive seven-week series of evening classes comprised of eight to 10 parents where discussions are held covering behavior management, foundation sensory issues, prompt hierarchies, reinforcement principles, socialization interactions, and functional analysis of behaviors.

8. The FBS Program Manager testified that the FBS program is multileveled. Initially, parents meet as a group to learn about managing behaviors. Often, the class is sufficient to address the family's needs. If further assistance is required, an assessment is done, which includes observations at school and at home and interviews with family. FBS

does assessments of children with autism; several of the staff behaviorists are specialists in working with higher functioning autistic clients. Assessments are collaborative, and the assessment is reviewed with the client's parents and counselor or case worker. If the family does not agree with the recommendations, HRC gets more involved and alternatives are discussed.

9. FBS provides whatever services are necessary to address the targeted behaviors. Services are provided within the context of the child's life and family. FBS is vendored by the Service Agency.

10. In addition, HRC offered the family a Relationship Activity Program (RAP) provided by The Center for Learning Unlimited (CLU). According to the proposal submitted to HRC by CLU, "the uniqueness of our program is that our staff is attuned to the changing needs of our students; it is transdisciplinary; wraps around the family with choices and options; and delivers services that support educational and behavioral needs of children with learning differences as well as children with diagnoses of high functioning autism, nonverbal learning disabilities, and anxiety disorder."

11. It is the Service Agency's position that the programs it has offered to the family are appropriate to meet the Claimant's needs. Claimant's parents believe that what the Service Agency has offered is not what Claimant needs. They feel that it is important to find a service provider to whom Claimant can relate, and he relates well to the RDI evaluator. Thus, RDI is a better program for him. Moreover, the RDI program integrates with the family and stresses the dynamics of relationships, which allows children in that program to develop flexible responses to social situations while social skills programs only teach children scripted responses, which are not always appropriate.

12. Claimant submitted a detailed report of the RDI assessment done by David Sponder, who is a RDI Certified Consultant. Mr. Sponder concluded that Claimant demonstrated "clear problems with frequency of reference scene for emotional or social information," "social anxiety that is probably evident peers at school," and a "blunted range of emotional expression." Thus, Mr. Sponder determined that Claimant and his family would benefit from RDI.

CONCLUSIONS OF LAW

1. The purpose of the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code § 4501 et seq.):

. . . is two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more productive and independent lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. However, the Act directs the Department, in turn, to provide the services through agencies located in the communities where the clients reside. Specifically:

. . . the State shall contract with appropriate agencies to provide fixed points of contact in the community Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers. (Welf. & Inst. Code§ 4620.)

3. Welfare and Institutions Code section 4646 provides for the development of a customized service plan for each regional center consumer, as follows:

(a) It is the intent of the legislature to ensure that the individual program plan and the provision of services and support by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive and normal lives, and stable and healthy environments. It is further the intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan [IPP], reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities . . . shall have the opportunity to actively participate in the development of the plan.

4. The IPP must specifically identify the consumer's particular needs, choose a modality for addressing each of those needs, identify the goal(s) to be achieved by the chosen services or supports, and establish a method for assessing the efficacy of the chosen program. In addition, the Service Agency is required to accomplish the goals in a cost-effective manner (See Welf. & Inst. Code §§ 4646, subd. (a)(11); 4660.2, subd. (b); and 4685.)

5. When an IPP is in place and either the consumer or the regional center proposes making changes to the services and supports being provided pursuant to the IPP, that proposal is functionally a request to modify the existing IPP. Such a request requires that, before making a decision, the consumer and the Service Agency staff and representatives gather information and collaboratively assess the request in a manner substantially similar to that mandated for the original IPP process. In this case, Claimant is requesting additional RDI services.

6. In administrative proceedings, as in civil actions, the party asserting the affirmative has the burden of proof, including both the initial burden of going forward with the evidence and the burden of persuasion by a preponderance of the evidence. (*See McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044.)

7. Welfare & Institutions Code section 4648, subdivision (a) (1), states:

Under the Lanterman Act, the Service Agency must provide services and supports to identified developmentally disabled persons. The services and supports must be provided in accordance with the consumer's IPP and in a manner consistent with the mandates of the Lanterman Act. Further, a regional center must develop a delivery of service design that reflects the maximum cost-effectiveness based on a service coordination model ensuring that effective and needed services and supports are available. (Welf. & Inst. Code § 4685, subd.(c).)

Funds cannot be used to pay for ineffective services or supports or for services and supports provided by other publicly funded agencies having a legal responsibility to serve all members of the general public.

8. The Service Agency is charged under Welfare and Institutions Code section 4651 with finding innovative and economical methods of achieving the objectives of individual program plans of persons with developmental disabilities. RDI may fall within the category of innovative techniques. However, Service Agency also has the responsibility for monitoring the effectiveness of all services it funds as well as the cost-effectiveness of the use of public resources. (Welf. & Inst. Code §§ 4501 and 4646, subd. (a).)

9. In this case, the Service Agency has declined to pay for RDI services for Claimant primarily because the therapy is new and its efficacy untested. In addition, HRC believes there are alternative services which would adequately address Claimant's concerns, which use tested behavior modification techniques, and which are less expensive to provide. Moreover, because Claimant and his family have not tried the proffered services, their belief that those services are not appropriate for Claimant is really speculative.

10. The Lanterman Act does not specifically authorize retroactive reimbursement of costs to families in the fair hearing context. The statutes detailing the IPP process suggest the opposite. An IPP is “a statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time limited objectives for implementing the person’s goals and addressing his or her needs.” (Welf. & Inst. Code § 4646.5, subd. (a) (1) and (2).) This procedure necessarily requires prior consideration and approval of any support or service provided to an individual consumer and suggests reimbursement is not typically available.

11. Yet, the lack of specific statutory authorization is not necessarily dispositive of the issue. If the Lanterman Act is to be applied as the Legislature intended, reimbursement may be available in particular cases where equity requires it. Thus, based on the general principles articulated in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 38, reimbursement may be ordered when the principles of equity apply or when, if not granted, the purposes of the Lanterman Act would be thwarted.

12. However, this is not such a case. Because the service Claimant sought was not shown to be appropriate and because Claimant chose to unilaterally undertake the RDI assessment when, without significant prejudice, he could have completed the IPP process, equitable considerations do not apply and reimbursement is not appropriate.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Claimant's request for RDI services is denied.
2. Claimant's request for reimbursement of costs incurred for his RDI assessment and associated services is denied.

Dated:

CAROLYN D. MAGNUSON
Administrative Law Judge
Office of Administrative Hearings

NOTE: This is a final administrative decision pursuant to Welfare & Institutions Code section 4712.5(b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.